

**Fredrick E. Clement**  
Attorney at Law  
1300 West Street, Suite C  
Redding, CA 96001  
(530) 229-3900  
Email: fredrick@fredrickclementlaw.com  
State Bar No. 132520

Attorney for Debtor in Possession Rosenau Investments, Inc.

IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

In re:

Rosenau Investments, Inc.

Debtor(s).

Case No. 2009-42219

DCN: FEC-13

Date: July 13, 2010

Time: 9:32 a.m.

Loc.: Courtroom 32, Dept. B  
501 I Street, 6 Floor  
Sacramento, CA 95814

Judge: Thomas C. Holman

**Motion of Debtor in Possession  
Rosenau Investments, Inc. for Sale of Real Property Described  
as The Pepper Tree Inn, California Free and  
Clear of Liens and to Pay Real Estate Commissions, and Costs of Sale  
[11 U.S.C. §363(b)(1), (f); FRBP 2002(a)(2), 6004, 9014;  
LBR 5008-1(b), 9014-1(f)(1)]**

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Motion for Sale of Real Property Described as The Pepper Tree Inn--Motion

1 **Introduction**

2 **A. Facts.**

3 Debtor in Possession Rosenau Investments, Inc. is a real estate investor and a hard money broker.  
4 Each of Rosenau Investment's projects followed a similar pattern. A person interested in funds to  
5 purchase, or rehabilitate, real estate would contact the Debtor, asking for a loan and offering to pay  
6 above-market interest rates. Simultaneously, persons interested in making sub-prime real estate loans  
7 would contact Rosenau Investments, Inc. and inquire about loan opportunities. The Debtor evaluated  
8 the proposed loan and provided information about it to persons interested in making such loans, asking  
9 if they were willing to participate. Once willing borrowers with sufficient funds to make the loan were  
10 identified, each participant would write a check to Rosenau Investments, Inc., and, in turn, it would  
11 execute an unsecured promissory note in favor of the participant. Each promissory note identified the  
12 project to which the loan pertained. Using the funds, Rosenau Investments, Inc., would fund the loan,  
13 receiving an amortized promissory note secured by a deed of trust from the borrower. Each month, the  
14 real estate borrower made payments to Rosenau Investments, Inc., who distributed it to the participants.

15 On October 13, 2009, the Debtor owned fifteen parcels of real estate. Ten of the parcels are fully  
16 developed (nine of which are residential and one of which is a hotel ("The Pepper Tree Inn"). One of  
17 the parcels is a 17 lot subdivision (including a home which is approximately 70% complete and 16  
18 undeveloped lots). The other four parcels are undeveloped.

19 **B. Procedural history.**

20 On October 13, 2009, the Debtor filed a petition pursuant to Chapter 7 of Title 11 of the United  
21 States Code.

22 By order filed January 8, 2010, the case was converted to Chapter 11 and Debtor remains in  
23 possession.

24 No Chapter 11 plan has been filed at this juncture. Absent an order from this court, exclusivity  
25 ends May 7, 2010. The Debtor in Possession has filed a Motion to Extend Exclusivity to August 5,  
26 2010. That motion has been noticed for May 4, 2010. Though the precise parameters of the plan have  
27 not yet been decided, the Debtor in Possession has concluded the plan will call for the liquidation of all  
28 of the Debtor in Possession's assets.

1 **C. This parcel.**

2 The Debtor In Possession seeks authorization of this court to sell real estate described as The  
3 Pepper Tree Inn ("the property") to Ronald Van Meeteren and Norma Van Meeteren for \$2,000,000.00,  
4 or to such over-bidder as the court may approve. This is a cash offer.

5 **Memorandum of Points and Authorities**

6 **I. The court may authorize the Debtor in Possession to sell property outside of the ordinary**  
7 **course of business.**

8 The court has discretion to authorize a sale of property of the estate outside the ordinary course  
9 of business:

10 The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary  
11 course of business, property of the estate...(11 U.S.C. §363(b)(1))

12 In ruling on a motion brought under Section 363(b)(1), the court should make two findings.  
13 First, the court needs to find a business justification for the sale. (In re Lionel Corp., 722 F.2d 1063,  
14 1071 (2nd Cir. 1983); In re Ernst Home Ctr., Inc., 209 B.R. 974, 979 (Bankr. W.D. Wash. 1997)) In this  
15 case there are at least two business justifications for this sale at this time. First, Rosenau Investments,  
16 Inc. is not in a position to continue operations and a plan proposed will necessarily involve the  
17 liquidation of its assets. (Decl. of Rosenau) Second, the Debtor in Possession is concerned by the  
18 continued instability, and likely continued decline, of real estate values. (Decl. of Rosenau)

19 Second, when the sale contemplated occurs in a Chapter 11 case for which there is not yet a  
20 confirmed plan, the court should consider whether the sale of all, or substantially all, of the Debtor's  
21 assets amounts to an attempt to circumvent the creditor protections afforded in the plan confirmation  
22 process. (In re Braniff Airways, Inc., 700 F.2d 935, 939 (5th Cir. 1983); In re Swallen's, Inc., 269 B.R.  
23 634, 637 (6th Cir. BAP 2001)) In such cases the court should look carefully for a good business  
24 justification. In this case, in addition to the foregoing reasons, liquidation of assets and placement of  
25 assets in a blocked account, as required by LBR 5008-1(b), is consistent with any liquidating plan that  
26 might be proposed.

27 **II. Method of sale.**

28 The court has discretion to authorize the sale under any one of three procedures: Sale through  
a confirmed Chapter 11 plan, public auction or private sale with an opportunity for an over-bid. (11

1 U.S.C. §1123(a)(5)(D); FRBP 6004(f)(1))

2 The Debtor has not hired a real estate professional to assist with the sale of this property.  
3 Prudential California Realtor and Nourmand & Associates are realtors representing the purchaser. They  
4 seek compensation, totaling 3% of the sale price (\$60,000.00) These realtors have presented a buyer,  
5 Ronald Van Meeteren and Norma Van Meeteren, and the Debtor in Possession contends that this offer,  
6 coupled with an opportunity for over-bid by interest parties and notice to all interested parties, is an  
7 appropriate method to protect the interests of creditors.

8 **III. The court should authorize the sale free and clear of liens.**

9 The court is authorized to sell an asset of the estate free and clear of liens in five instances:

10 The trustee may sell property under subsection (b) or (c) of this section free and clear of  
11 any interest in such property of an entity other than the estate, only if— (1) applicable  
12 nonbankruptcy law permits sale of such property free and clear of such interest; (2) such  
13 entity consents; (3) such interest is a lien and the price at which such property is to be  
14 sold is greater than the aggregate value of all liens on such property; (4) such interest is  
in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable  
proceeding, to accept a money satisfaction of such interest. (11 U.S.C. §363(f))

15 In this case, the Debtor in Possession contends that the property may be sold free and clear of  
16 liens because the sale price exceeds the aggregate amount of all liens. (Exh. C) (11 U.S.C. §363(f)(3))

17 **IV. The court should approve realtor's commissions and closing costs.**

18  
19 The Debtor in Possession contends that the court should approve the payment of realtor's fees  
20 and commissions of 3% to the buyer's realtors.

21 Second, the Debtor in Possession estimates closing costs to be \$2,369.00.

22  
23 Third, the Debtor in Possession is aware of liens to the following creditors and in the following  
24 amounts: Property taxes of \$22,735.62. The moving party does not dispute these liens and prays  
25 authority to pay those creditors from escrow.  
26  
27  
28

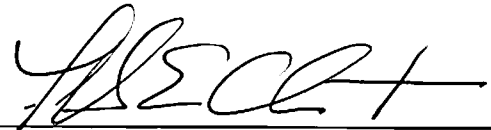
1 **V. Net proceeds.**

2 The Debtor estimates that the sale will net approximately \$1,915,687.18. That amount is taken  
3 directly from the Seller's Estimated Closing Statement. (Exh. D) Rosenau Investments, Inc. contends  
4 that the net proceeds be deposited into a "separate, interest-bearing blocked accounts at a federally  
5 insured depository." (LBR 5008-1(b))  
6

7 **Conclusion**

8 The Debtor in Possession prays that the court authorize the sale of this property as set forth herein.  
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10 Dated: June 8, 2010

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12 Fredrick E. Clement  
13 Attorney for Debtor in Possession Rosenau  
14 Investments, Inc.  
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